

1 A These are all things that would be good to
2 determine, preferably by not asking leading
3 questions.

4 Q But once again, you know, in a non ideal
5 world that -- that might become necessary, and it
6 would not violate the standard of care to do so in
7 those circumstances, correct?

8 A In some circumstances, that's correct.

9 Q All right. And another area of inquiry
10 that would be appropriate is to ask whether any
11 photographs or videotaping was involved during the
12 course of sexual abuse, too, right?

13 A Yes.

14 Q All right. I'm going to move down to
15 subsection G -- I'm sorry, subsection H, "Physical
16 Examination of the Sexually Abused Child."

17 And first of all, you state there under
18 item No. 1, quote: "Most sexually abused children
19 do not have any corroborating physical findings,"
20 end quote.

21 Again, that kind of goes back to what we
22 were describing earlier, that the majority of kids
23 who have been sexually abused there isn't any
24 medical evidence of the abuse, right?

25 A Yes.

1 abuse, in incest, that recantations happen sometimes
2 because the child is pressured by family members to
3 take back the allegation.

4 Q Do you recall that back in 1983, that
5 Roland Summit was saying, quote: "Whatever a child
6 says about sexual abuse, she is likely to reverse
7 it," end quote?

8 A I don't remember that specific comment.

9 Q Okay. But do you recall that generally he
10 was suggesting that at least in incest cases like
11 what we're dealing with in this case, recantations
12 occur with significant frequently?

13 A Yes.

14 Q And you would agree with that assessment
15 by Dr. Summit, would you not?

16 A I really don't know what the numbers are.
17 I can just say that it happens sometimes, but I
18 don't -- I have no idea what the numbers would be.

19 Q Okay. Would you agree that one basis for
20 a recantation, or what might cause a child to
21 recant, is if their abuser is released from prison
22 and is now -- they are now at risk of abuse
23 reoccurring?

24 A I don't know. I don't think I have ever
25 heard that.

1 that concept, that it was very, very rare for
2 children to exaggerate because I don't -- even
3 10 percent -- even if my other number is 10 percent,
4 that's not rare. That's hundreds of thousands of
5 cases a year, 10 percent of all children who
6 allegedly were abused. So I don't agree with his
7 contention that it was rare for children to make
8 false statements.

9 Q He put it at 99 percent are true. You put
10 it at around 90 percent are true. So that's --
11 that's -- you are in dispute with him? Is that what
12 you are saying?

13 A Yes. That -- well, that would have been
14 my dispute in 1993 when I used that figure.

15 Q Right. Do you know if you had a dispute
16 with that figure of 99.9 percent of child
17 disclosures of sexual abuse are true, whether you
18 disputed that around the 1990 -- 1984 to 1985 time
19 frame?

20 A I don't know.

21 Q Okay. Have you ever been involved in a
22 case involving multiple perpetrators and multiple
23 victims?

24 A Well, I'm not sure. I know I have been
25 involved in cases of multiple victims, and I -- I --

1 were you focused on professionally during that time
2 period? What were you doing?

3 A During that period of time, I was living
4 and practicing child psychiatry in northern
5 Virginia, in Alexandria, Virginia, and I was mainly
6 doing outpatient psychiatric evaluations and
7 psychotherapy of children and teenagers and
8 occasionally adults. So most of my work was as a
9 clinician doing therapy, and I was doing an
10 occasional forensic evaluation.

11 Q Would you agree, Dr. Bernet, that you do
12 not have an expert opinion on what the standard of
13 care was for police officers or child protective
14 services workers during the 1984-1985 time period,
15 on the topic of child sexual abuse interview
16 techniques?

17 A I think I'm an expert on some aspects of
18 it. In other words, as I stated before, I don't
19 know exact protocols that might have been available.
20 But I do think, based on what I know about child
21 development and interview techniques, that certain
22 basic principles have been -- were known to
23 everybody, to professionals during that time,
24 specifically the problems with leading suggestive
25 and repetitive questions, the problems with, for

1 instance, bribing a child to say certain things or
2 praising the child for having said certain things,
3 that -- I believe that it's been common knowledge
4 that adults have to be careful about how they
5 influence the child. And so I believe I'm
6 knowledgeable and have expertise in that regard.

7 Q Any other subjects related to child
8 interviewing technique other than what you just
9 described that you believe you have an expertise
10 about related to standards that were applicable
11 during the 1984 to 1985 time period?

12 A Well, I think what I related generally
13 comes under the heading of coerciveness, that asking
14 leading and suggestive and repetitive questions are
15 forms of coercion. Praising the child is a form of
16 coercion, in a sense. Threatening the child that
17 certain things are going to happen unless the child
18 makes statements that the interviewer is looking
19 for. I think that those are the things that I would
20 have an opinion about and that I think were well
21 known in the 1980s.

22 Q Okay. And I just want to get a complete
23 list. Is there anything else beyond what you've
24 just described?

25 A Well, I guess we could look at my report

1 have been aware of the concept of avoiding
2 suggestive and leading questions.

3 Q Okay.

4 A In other words, the purpose of the
5 articles is just to demonstrate how prevalent that
6 understanding was, and -- but as far as
7 Dr. Krause -- Detective Krause goes, she herself
8 said that she was aware of the problems of leading
9 questions.

10 Q Would it be your belief that Detective
11 Krause also would be aware, as you've testified here
12 earlier today, that in some instances, particularly
13 with a reluctant child witness, that it may be
14 necessary and appropriate to use both leading and
15 suggestive questions during the course of a child
16 sexual abuse interview back in the 1984, '85 time
17 frame?

18 A Yes, I think that was her opinion.

19 Q And that -- that's still true today among
20 professionals, is it not?

21 A Yes, I think we might disagree on whether
22 it was an appropriate thing to do in the case, you
23 know, the actual case that is before us. But I
24 think that the general notion is -- people would
25 agree to it. I'm not sure people would agree on

1 point that one was given to him.

2 Q Is it your belief to a reasonable degree
3 of psychiatric certainty that if a child interviewer
4 offers a hot chocolate to a child before
5 interviewing them, that that has a significant
6 increase in inappropriately -- an increase in the
7 likelihood of inappropriately coercing that child to
8 make a false disclosure of sexual abuse?

9 A I don't think I would put it like that.
10 But see, I don't think we're looking at a single
11 instance. I think we are looking at a pattern.
12 We're looking at a pattern of her treating the
13 children and in seeing them in a personal space,
14 taking -- going to the mall with one of them.
15 There's a pattern of engaging them in an overly
16 personal way.

17 And I think that that would -- would lead
18 the children to try to be more cooperative and try
19 to say what the interviewer is looking for.

20 Q Is it your belief that Detective Krause
21 fabricated the statements that the children were
22 making to her as she reported in her police reports?

23 A I don't know if she did that. I think
24 it's possible she -- she could have misstated the
25 way the conversations went. I'm -- I'm not -- I

1 the children, especially to five-year-old Kathryn,
2 seemed grown up. There are complex sentences.
3 There are compound sentences just the way they are
4 stated seems overly grown up for this little girl.
5 So it -- I'm sort of wondering whether the little
6 girl really said those things, or whether Detective
7 Krause said those things, and then the girl agreed
8 with her.

9 Q I understand you think it -- there's some
10 indication that might have happened. Let me pin you
11 down.

12 Can you say to a reasonable degree of
13 certainty that it, in fact, happened? That
14 Detective Krause was fabricating statements that
15 these children made during the course of her
16 interviews?

17 A No, I don't think I can say that that
18 strongly, but it's -- it's certainly something that
19 I would wonder about and that whoever ultimately
20 decides these things would have to add that together
21 with whatever other information the finder of fact
22 has to decide about that.

23 Q Okay. I'm going to talk about briefly
24 false positive and false negative error rates in the
25 course of child disclosures of sexual abuse.

1 suggestive, leading and repetitive questions; the
2 problems of threatening a child. I think those are
3 so basic that I think it's fair to apply those
4 criticisms.

5 Q You will not be offering an opinion in
6 this case, will you, that any particular child
7 involved here was, in fact, sexually abused or not
8 sexually abused? That's not going to be something
9 you are going to be opining about, is it?

10 A That is correct. I'm not having an
11 opinion about the ultimate question.

12 Q Sure. And you -- you haven't interviewed
13 any of the people involved in this case, whether
14 it's the investigator, the children, the father or
15 anybody, right?

16 A That's correct.

17 Q Is it also correct that you have never
18 been acknowledged as an expert in any area in the
19 State of Washington or in Washington federal courts?

20 A That is correct. I have never testified
21 in the State of Washington.

22 Q Okay. And you're not licensed to practice
23 in the State of Washington either, are you?

24 A That's correct.

25 Q Would you agree that even to this day

1 Q Is it your understanding that the RATA
2 protocol you mentioned before was similarly focused
3 on children who made a prior outcry as distinguished
4 from those who have not?

5 A Yeah. Well, it's -- it's my understanding
6 that both of those were developed primarily for --
7 from children who have made disclosures or
8 allegations, but that both of them can still be used
9 with other children, although I suppose you would
10 have to make some modifications. But I think you're
11 correct, that they were originally designed for
12 children who had previously made some kind of
13 statement.

14 Q Would you agree that there is -- that
15 every child is different, and thus every interview
16 is different in some respect because you have to
17 address the particular child being interviewed? In
18 other words, there is no one-size-fits-all
19 interview?

20 A Well, I think there are general principles
21 that fit all.

22 Q Right.

23 A But the way it actually plays out, I'm
24 sure every child is different.

25 Q And there are different judgment calls

1 close to finishing, although I'm sure others will
2 have questions for you.

3 We talked about how many interviews, and
4 you were saying one, two, to three might not be --
5 would be within the realm of reason, but beyond
6 three might not be.

7 What about length of interviews? Are you
8 aware of some standard of care that existed back in
9 the 1984, '85 time frame about how long a child sex
10 abuse interview should last before you're developing
11 concerns that it might become coercive in some way?

12 A No, I don't have any specific information
13 on that.

14 Q Okay. Do you know whether there's some
15 consensus currently as to the length of time a child
16 sexual abuse interview should be limited to avoid
17 the risk of becoming coercive?

18 A No, I haven't heard it stated in that way.
19 I think usually you try to size up based on how the
20 child is doing and kind of the attention span of the
21 child. I -- I would imagine that typical interviews
22 would -- would not go beyond an hour, and probably
23 the average might take 45 or 50 minutes. But I
24 don't know any specific rules. In general, younger
25 children seem to tolerate less -- they can handle a

1 MS. FETTERLY: Is that the one that you
2 are giving to the reporter?

3 THE WITNESS: Yes, it is.

4 MS. FETTERLY: Okay. Maybe the reporter
5 could mark that and just verify that it's the
6 19-page narrative report. And then the CV is
7 attached to it. Has that now been marked?

8 THE REPORTER: It has been. Just one
9 moment. Let me check. (Reviews document.) It
10 is a 19-page exhibit. The CV is not attached.

11 MS. FETTERLY: I don't need to have the CV
12 attached, just the 19 pages that's dated
13 October 5, 2012.

14 THE REPORTER: Yes, ma'am. It is marked
15 as Exhibit 1.

16 MS. FETTERLY: Okay. Thank you.

17 (Marked Exhibit No. 1.)

18 BY MS. FETTERLY:

19 Q If you -- Doctor, could you turn to page
20 12 of Exhibit 1, please.

21 A Yes, I have it.

22 Q Okay. And the first paragraph on page --
23 the top of page 12, you're referencing Mr. Peters'
24 interview of Kathryn which took place December 11,
25 1984. And you stated: "Conducting the interview of

1 Kathryn, Mr. Peters' purpose was not to determine
2 whether Kathryn had been abused by her father or by
3 anyone. He was not conducting an investigation of
4 what may have happened to Kathryn."

5 And then that's what you stated in your
6 report, correct?

7 A Yes, it is.

8 Q Okay. So in your view, the interview
9 conducted by Prosecutor Peters in December of 1984
10 was not an investigative interview?

11 A That's correct.

12 Q Okay. And then you go on to say:
13 "Instead, Mr. Peters knew what Kathryn had
14 previously said to Detective Krause. Mr. Peters was
15 simply trying to get Kathryn to repeat for the video
16 camera what she had previously stated to Detective
17 Krause." And then you go on to quote sections of
18 the interview.

19 Would it be correct that, as you state,
20 rather than to determine whether or not the abuse
21 occurred, Mr. Peters was actually conducting his
22 interview of Kathryn to evaluate her competence as a
23 witness if the case were to be charged?

24 A Yes. That's my understanding that that's
25 what Mr. Peters said in his deposition.

1 Q Okay. And, likewise, that he would be
2 also trying to evaluate her qualifications as a
3 witness, again, if the case were to be charged; is
4 that correct?

5 A Yes. That's what he said in his
6 deposition.

7 Q And you would have no reason to question
8 that, I take it? Meaning, question the purpose of
9 the interview as he testified?

10 A Well, I think it's correct to say that as
11 far as I can tell, he was trying to size up whether
12 she would be an appropriate witness, whether she
13 could say the things to him that she had previously
14 said.

15 I think he and I have a different
16 definition of evaluation of competence. I know that
17 he -- he states in his deposition that he was trying
18 to assess her competence as a witness. And I would
19 have a different definition of how to do that. So
20 that's just a different -- maybe we just have a
21 different way of looking at that.

22 Q But you would agree that ultimately, that
23 whether a witness is competent or not is a decision
24 for the court; you would agree with that?

25 A Yes, that's my understanding.

1 Q So again, going back to the distinction
2 that you drew in your report between the purpose of
3 Detective Krause when she did her interviews, which
4 was an investigation of the allegations, compared to
5 the purp -- Mr. Peters' purpose for his interview,
6 you would agree that Mr. Peters' purpose was to make
7 a determination -- a determination of whether or not
8 criminal charges should be brought? Was that your
9 understanding?

10 A Yes.

11 Q And if they were brought, how Kathryn
12 would fare as a witness?

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q And as we know from what happened in this
17 case, charges were filed against Mr. Spencer; is
18 that consistent with your understanding?

19 A Yes.

20 Q Okay. And do you know who actually made
21 the decision to file those charges?

22 A In his deposition, I believe that
23 Mr. Peters said that his supervisor made that
24 decision.

25 Q The elected prosecutor?

1 A Yes.

2 Q Okay. Do you have any reason to question
3 the accuracy of that?

4 A No. I don't know any -- that's not
5 something I would know about.

6 Q Okay. Now, in response to Mr. Freimund's
7 questions that you were asked, you stated that a
8 relatively, as I recall, small portion of your
9 forensic practice involved the evaluation of
10 interview techniques of what you and he were
11 discussing as the front-line investigators, meaning
12 police officers or child protective services
13 workers; is that correct?

14 A Yes.

15 Q Okay. Other than this case, have you ever
16 had occasion to evaluate interview techniques
17 utilized by a prosecuting attorney in making a
18 decision whether to file criminal charges against a
19 suspect?

20 A I don't remember such a situation.

21 Q Have you ever had occasion to research
22 yourself protocols that are appropriate for a
23 prosecutor to utilize in conducting such interviews?

24 A No.

25 Q Are you familiar with any body of academic

1 literature on that subject that would have been in
2 effect in 1984?

3 A No, not that specifically -- not that
4 specifically relates to prosecutors. I mean, some
5 of the bibliography that I came up with about
6 interviewing children and coercion and so on did
7 reference both legal literature and psychological
8 literature, and it referenced attorneys. It didn't
9 specifically talk about prosecuting attorneys.

10 Q Are you aware of what a prosecuting
11 attorney would look for in -- in determining or
12 making evaluations of the competence of a witness?

13 A Well, my understanding from Mr. Peters'
14 deposition is that he is looking to see whether the
15 potential witness can tell a coherent account of
16 what happened, a coherent, logical account that
17 seems believable, that that's what he's looking for.

18 Q And there would be certainly nothing
19 inappropriate with interviewing the witness to do
20 that, or the potential witness, to make that
21 evaluation; would that be correct?

22 A That's correct. I think that prosecutors
23 do that.

24 Q Okay. And are you aware of the procedure
25 utilized in the State of Washington to initiate

1 criminal prosecutions?

2 A No, not specifically. I -- he may have
3 described it in his deposition; but other than that,
4 I wouldn't be familiar with it.

5 Q Okay. Specifically, do you know whether a
6 grand jury indictment is typically used as opposed
7 to the prosecutor himself or herself filing
8 information outlining facts which, if proven, could
9 lead to a conviction?

10 A Right. I'm not -- I don't know which way
11 that happens.

12 Q And assuming that more commonly the latter
13 procedure, meaning that if the grand jury
14 procedure -- the grand jury indictment is used
15 rarely, and it's more common to use the filing of
16 information, do you know or have any understanding
17 of what a prosecutor looks for in reviewing a police
18 report which documents the interview of witnesses in
19 making a determination whether or not to file
20 charges?

21 A No.

22 Q Do you know what standard a prosecutor
23 would utilize to determine whether the allegation --
24 or whether the information set forth in a police
25 report is fabricated or not?

1 A Not specifically. I think the ultimate
2 standard is probable cause, but I don't know
3 specifically what standard they might have to
4 determine fabrication.

5 Q As I understood your earlier testimony,
6 you could not state with reasonable certainty in
7 response to one of Mr. Freimund's questions that
8 Detective Krause's reports contained fabrications;
9 is that correct?

10 A That's correct. I can only raise that
11 concern. That would have to be combined with other
12 information.

13 Q So would it be fair to say that there
14 would be no way that Mr. Peters could determine with
15 any sort of reasonable certainty in reviewing
16 Detective Krause's report whether or not they
17 contained fabricated information?

18 A I don't think you can do it simply from
19 what's written on the paper. I think you have to
20 combine that with other information that you might
21 know about the case.

22 Q Okay. And that would include, of course,
23 the handwritten statements provided by Shirley
24 Spencer, which, as Mr. Freimund pointed to you, was
25 the first disclosure from Kathryn in this case?

1 A That would be one of the things that you
2 would consider.

3 Q Okay. What else would be considered?

4 A Well, if he's trying to figure out whether
5 Detective Krause put down any fabricated information
6 in her reports, I suppose he would take into
7 consideration whatever he happened to know about
8 Detective Krause, perhaps other information that he
9 knows about the case, information that he might know
10 about the children.

11 Q So one of the things he would look for
12 would be whether or not she had provided accurate
13 information to him in the past.

14 Would that be accurate?

15 A He would probably be interested in that,
16 and taking that into consideration.

17 Q And if she, in fact, had, would that be
18 something that would lead a prosecutor toward not
19 assuming that the reports contained fabricated
20 evidence?

21 A Yes, it probably would.

22 Q And you go on in the report to make a
23 certain number of critiques about the interview
24 conducted by Mr. Peters in December of 1984.

25 On a page -- or at several points between

1 be harmful to her father?

2 A Well, it's my understanding that he wanted
3 to see if she would be a good witness. And if she
4 did turn out to be a really good witness, he would
5 have been in a position to charge Mr. Spencer with
6 crimes. And so he was hoping that she would say to
7 him what she had previously said to Detective
8 Krause.

9 Q And you think that would be a motive for
10 him to wish that she -- wish her to make
11 disclosures? Is that you're saying?

12 A Sure. That's what motivates prosecutors
13 is to prosecute people.

14 Q Would you agree that much of the
15 information contained in this interview by
16 Mr. Peters was duplicative of the interviews of
17 Detective Krause earlier in 1984 of Kathryn?

18 A Oh --

19 Q In other words, at some point she didn't
20 wish to discuss the issues and the disclosures. And
21 then she would make some statements, and then made
22 some other statements that might not be consistent
23 with abuse?

24 A That's right. She said a lot of different
25 things in this interview. I mean, she said -- even

1 though she didn't talk very much, at one point she
2 said nothing happened that summer. And later in the
3 interview, she is acting out sexual behaviors. So
4 some -- so there are different parts of what she
5 says in this interview that are consistent with
6 things that she said previously. I think that's
7 what you asked me. I think you asked me if --

8 Q What? I didn't catch it.

9 A Oh. There are certain parts of what she
10 says to Mr. Peters that are consistent with what she
11 had previously said to Detective Krause.

12 Q Correct. That was my -- my question.

13 And then -- so in fact, this interview
14 really was pretty cumulative of what -- of Detective
15 Krause's interviews of Kathryn in October of 1984.

16 Would that be correct?

17 A Well, it's cumulative in a very
18 non-convincing way.

19 Q Right.

20 A Because -- it's cumulative because he brow
21 beats her. And then they take an hour off where
22 something happens. In other words, it is cumulative
23 but it's very unconvincing because it's so coercive
24 there.

25 Q Now, as far as the break in the interview,

1 things in that had to do with how to address
2 competency.

3 Q And do you know what that -- those were
4 the factors that a Washington court in 1984 would
5 have applied in determining the competence of a
6 child witness?

7 A I think they are very similar. The only
8 reason why I know it is because it came up in
9 Mr. Peters' deposition. There was some discussion
10 of the four factors that the court would take into
11 consideration. And the court's four factors were
12 very similar to these four factors.

13 Q And so you would agree that really one of
14 the primary purposes of that December 1984 interview
15 was to make the prosecutor's own evaluation whether
16 or not a court would deem Kathryn competent to
17 testify.

18 Would that be accurate?

19 A Well, he was doing one part of that
20 evaluation. He was doing the part --

21 Q But it went toward that --

22 A Yes.

23 Q -- toward that goal?

24 A Yes, it did go to that goal.

25 Q And that would have related directly,

1 would it not, to the decision whether or not to
2 charge Mr. Spencer with a crime; is that correct?

3 A That's my understanding simply from what
4 was stated in the deposition.

5 Q And, again, you have no reason to doubt
6 that, that that was the purpose of that interview,
7 correct?

8 A That's correct.

9 Q So getting back again -- thank you for
10 clarifying any additional opinions you have. I just
11 want to be clear that with this addition, that all
12 the opinions you've made to date in regard to this
13 case are contained in either Exhibit 1 or Exhibit 2
14 or what you testified to today; is that correct?

15 A Yes, it is.

16 Q Okay. Do you have plans to do further
17 work on this case and possibly make further
18 opinions?

19 A If additional information is provided to
20 me, that might happen. But I don't have any
21 immediate knowledge that that's going to happen.

22 Q And if that were to happen, would you
23 agree to convey those supplemental opinions to
24 Ms. Zellner --

25 A Yes.

1 naked. So to me it's -- it struck me as very, very
2 unusual.

3 Q Okay. But my specific question to you is
4 do you have any basis to express an opinion about
5 whether that did or did not violate whatever
6 standard practice was in effect in 1984 and '85
7 among law enforcement or CPS field interviewers?

8 A No, I don't have specific information
9 about that.

10 Q You expressed criticism of Detective
11 Krause for telling each child what the other child
12 had said, correct?

13 A Yes.

14 Q Do you know if that violated the generally
15 accepted standard for conducting interviews among
16 field interviewers in 1984, '85?

17 A I don't know.

18 Q You were asked earlier today about the
19 handwritten narrative statement that Shirley Spencer
20 generated to document the first disclosure made by
21 Kathryn.

22 Do you -- you recall that testimony?

23 A Yes, I do.

24 Q I think you said that -- that we don't
25 know whether Shirley used leading questions at any

1 Would you agree with me that you cite no
2 examples of repetitive questioning by Detective
3 Krause in regards to her interviews of Little Matt
4 Hanson?

5 A You're asking me about repetitive
6 questions on those two pages? That's correct. I
7 don't have any examples from Little Matt.

8 Q Is that because you didn't find any
9 examples of the Detective Krause using repetitive
10 questioning with Little Matt?

11 A Probably that's correct.

12 Q Okay. Let's go to suggestive questions.
13 There you did find examples of suggestive questions
14 on pages 6 through the top of page 9 as to all three
15 of the alleged victims, right?

16 A Yes.

17 Q But when you go to leading questions by
18 Detective Krause on page 9, you only identify
19 leading questions as having been used with Kathryn
20 and not either Big Matt or Little Matt, correct?

21 A Yes.

22 Q Is that because you did not see any
23 examples of Detective Krause using leading questions
24 with both of those boys?

25 A Yes, I think that's correct, what you just

1 said.

2 Q Okay. Let's go to the next category you
3 have there, starting at page 9 and extending to the
4 top of page 11, Detective Krause's coercive style of
5 interviewing. You indicate that she had a coercive
6 style in interviewing Kathryn Spencer and Matt
7 Spencer, but you did not find any evidence of a
8 coercive style of interviewing by Detective Krause
9 of Little Matt Hanson, did you?

10 A I don't think so, at least not that would
11 fit under this definition that I'm using here.

12 Q Okay. Let's go to the next area there
13 that you talk about on pages 11 and 12, Detective
14 Krause's pattern of reinforcing positive behavior.
15 You found no evidence of a pattern of reinforcing
16 positive behavior used by Detective Krause in her
17 interview of Little Matt Hanson; isn't that correct?

18 A That is correct.

19 Q Is it your knowledge, sir, that even
20 though you didn't find very much fault in the
21 interviews of -- Detective Krause's interviews of
22 Little Matt other than the use of suggestive
23 questioning on a few occasions, that Little Matt
24 Hanson, to your knowledge, has not recanted the
25 abuse, like, by Mr. Spencer?

1 A That is my understanding.

2 Q Okay. And just on -- on the -- on Peters,
3 your criticism of defendant Jim Peters, you would
4 agree, would you not, that Mr. Peters had no
5 coercive influence whatsoever on the disclosures
6 made by Matt Spencer and Little Matt Hanson because
7 he had no involvement -- or no interviews of him to
8 your knowledge, right?

9 A As far as I know, that's correct.

10 Q Okay. So the only child that Mr. Peters
11 may have had some coercive influence on in your
12 opinion would be Kathryn Spencer and not the other
13 two boys, right?

14 A That is correct.

15 Q All right. I want to direct your
16 attention, now, please to page 22 of Exhibit 2 and
17 focus your attention on your third opinion there.

18 You say there that: "The investigative
19 interviews conducted by Detective Krause and
20 Mr. Peters were so improper, coercive and
21 psychologically abusive that the interviewers knew
22 or should have known that they would yield false
23 information."

24 When you were asked about that a little
25 while ago, you said that -- by Ms. Fetterly, I would

1 say -- I should say -- that they knew or should have
2 known that it -- it could lead to unreliable
3 information. And I want to pin you down on that,
4 sir.

5 Are you saying that they knew that these
6 kids were giving them false information, or are you
7 saying they knew or should have known that because
8 of the use of repetitive questioning on some of the
9 kids, leading questions on some of the kids, that
10 they knew that false information was coming from
11 those kids?

12 A Yes. I would say that they knew or should
13 have known that the information was unreliable and
14 that it could well be false.

15 Q Okay. But let's make this distinction,
16 and I want to be careful about it.

17 Wouldn't you agree that there's a
18 difference between something being unreliable and
19 something being categorically false?

20 A Yes. You know, I think I tried to make
21 the distinction in the very last sentence of the
22 discussion part of that conclusion on the next page.
23 And I say: "When interviews are conducted in that
24 manner, it is likely that false information will be
25 elicited and the children's statements become

1 unreliable."

2 So that -- the problem is that when you
3 elicit a lot of information, you don't know which
4 part is correct or true and which parts are false.
5 And since you don't know, you can't figure it out.
6 The overall result is that the child is unreliable.
7 I guess that's what I'm trying to say here.

8 Q Okay. I appreciate that qualification.

9 A And that, yes, that they -- that they
10 should have known that some of the statements that
11 are being produced are going to be true, and some
12 are going to be false. They should have known that.

13 Q Okay. But they couldn't know which of
14 them were true and which of them were false, could
15 they?

16 A Well, I suppose maybe a person could
17 figure that out if you were doing a comprehensive
18 investigation, and you were going back and you
19 collected information from the very beginning, a
20 really careful analysis of how Kathryn's statements
21 originally arose. And then you could dissect from
22 there which subsequent statements were influenced by
23 the interviews by Detective Krause, and you could
24 ultimately try to figure out -- maybe not a hundred
25 percent, but you could figure out somewhat -- what

1 statements were true and what statements were false.

2 Q But which -- when -- what we are talking
3 about here, though, is you're saying that Detective
4 Krause and Mr. Peters knew or should have known that
5 particular statements were true or false. And
6 that's what I'm asking you. Which -- how would they
7 know that?

8 A Oh, I'm not -- I don't think I said that
9 they should know particular statements. I think
10 that they should have known that you are going to
11 end up with a mishmash of some true and some false
12 information. And you have no way -- unless you
13 really do a very thorough investigation, you are not
14 going to able to figure out which are which.

15 Q And I want to go back to your earlier
16 testimony today just to be sure I'm understanding
17 this opinion labeled No. 3 in your report.

18 I believe, and please correct me if I'm
19 wrong, but I believe you testified you cannot say
20 that the disclosures of sexual abuse made by these
21 children saying that their father sexually abused
22 them were false.

23 You don't have an opinion on that; am I
24 right?

25 A I don't have an opinion in the sense that

1 I have stated it here. I mean, I have thoughts
2 about that, if you want my thoughts. But I guess --
3 I wasn't really asked. I wasn't really asked to
4 figure that out or to give an opinion about that, so
5 I don't have an official opinion on that.

6 Q And you can't say to a reasonable degree
7 of psychiatric certainty that the disclosures made
8 by these children that they were sexually abused by
9 Clyde Ray Spencer are false?

10 A That is correct. But I've got to tell
11 you, I have a really high level of suspicion just
12 from things we've talked about here today, that
13 partly the very initial outcry made by Kathryn is in
14 the context of her doing something naughty and being
15 reprimanded. And she's reprimanded, and then she
16 suddenly says, Oh, mommy does this. That other
17 lady, Karen, does this. Daddy does it.

18 That's a classic example of how a false
19 allegation arises. And then the interviews by
20 Detective Krause are classic examples of how a
21 thought in the child then gets made into these
22 verbal statements because the child is trying
23 really, really hard to say what the interviewer is
24 assuming is the correct answer, that the interviewer
25 feels is a correct answer. So there's lots in this